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APPENDIX A

Constitutional Provisions and Statutes Involved:

Bill of Rights
Fourth - Fifth - Eighth - and Fourteenth Amendment to the United States Constitution
28 U.S.C. Section 1343
42 U.S.C. Section 1983

California Government Code:

Section 911.2: TIMES FOR PRESENTMENT OF CLAIMS—"A Claim relating to a cause of action for death or injury to a person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than the 100th day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than one year after accrual of the cause of action."

Section 915 DELIVERY OR MAILING OF CLAIM, AMENDMENT, OR APPLICATION. —(a) "A claim, any amendment thereto, or an application to the public entity for leave to present a late claim shall be presented to a local public entity by:

(1) Delivering it to the clerk, secretary or auditor; or

(2) Mailing it to such clerk, secretary or auditor or to the governing body at its principal office.

Section 945.4 PROHIBITION AGAINST SUIT IN ABSENCE OF PRESENTATION OF CLAIM AND ACTION THEREON. "No suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division."

Section 950.2 WHEN ACTION BARRED FOR FAILURE TO PRESENT CLAIM OR COMMENCE ACTION WITHIN TIME SPECIFIED.—"Except as otherwise provided in this chapter, a claim need not be presented as a prerequisite to the maintenance of an action against a public employee or former public employee for injury resulting from an act or ommission in the scope of his employment as a public employee."

CALIFORNIA RULES OF COURT.

Rule 211 (b)

"No pretrial conference shall be reported by a phonographic reporter of the court except upon:

(i) demand of a party to the case who shall advance the fee, if and, at the time of the demand; provided that, the superior court of any county may by local rule require that the demand shall be made, and the fee advanced, to the clerk at least 48 hours before the date of the pretrial conference; or (ii) order of the pretrial conference judge, in which event the fee, if any, shall be evenly divided between the parties.

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APPENDIX B-1

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HAROLD V. BOISVERT, COUNTY OF LOS ANGELES, JOE T. SWEAT and R. L. BROWN, Petitioners,	
vs.	No. 847712
MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, Respondent, EVERT L. HAGAN, Real Party in Interest.	

[Original filed Oct. 27, 1964, County Clerk.]

ALTERNATIVE WRIT OF PROHIBITION AND MANDATE

Oct. 27, 1964

THE PEOPLE OF THE STATE OF CALIFORNIA TO THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, Respondent and to EVERT L. HAGAN, Real Party in Interest:

GREETINGS:

WHEREAS by the verified petition of HAROLD E. BOISVERT, COUNTY OF LOS ANGELES, JOE T. SWEAT and R. L. BROWN, it has been made to appear that you, the Respondent Court, are proceeding in excess of your jurisdiction by continuing to entertain an action entitled Evert L. Hagan v. Harold V. Boisvert, County of Los Angeles, et al., No. 71483, which is barred by law for failure to file a claim with the public entity as required by law, and it appearing that the petitioners herein have no other plain, speedy and adequate remedy at law.

WE, THEREFORE, command you the said MUNICIPAL COURT, and you the said EVERT L. HAGAN, forthwith on the receipt of this writ to refrain from taking any further proceedings in the case of Evert L. Hagan v. Harold V. Boisvert, County of Los Angeles, et al., No. 71483, until further order of this court; or in the alternative, that you the said MUNICIPAL COURT grant the motion for summary judgment of petitioners herein in said Municipal Court case; or in the alternative that you and each of you show cause before this court in Department 70 thereof of the Superior Court of the State of California for the County of Los Angeles, on the 6th floor of the County Courthouse, 111 North Hill Street, Los Angeles, on the 24th day of November, 1964, at the hour of 9:30 A.M., why an order should not be made perman-

ently restraining and enjoining you from taking any further proceedings in connection with said action, other than to grant the aforesaid mention for summary judgment or to dismiss said action.

We further command you that pending further order of this court, you desist and refrain from any further proceedings on said complaint.

Witness the Honorable A. CURTIS SMITH, Judge of the Superior Court of the State of California for the County of Los Angeles.

Attest my hand and seal of this court this 27th day of October, 1964.

WILLIAM G. SHARP, Clerk of the Superior Court of the State of California for the County of Los Angeles

By J. MAC GREGOR

Deputy

Let the foregoing writ issue.
DATED THIS 27th day of OCTOBER, 1964.

A. CURTIS SMITH

Judge of the Superior Court

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APPENDIX B-2

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HAROLD V. BOISVERT, COUNTY OF LOS ANGELES, JOE T. SWEAT and R. L. BROWN, Petitioners, vs. MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, Respondent, EVERT L. HAGAN, Real Party in Interest.	No. 847712

PEREMPTORY WRIT OF PROHIBITION AND MANDATE

THE PEOPLE OF THE STATE OF CALIFORNIA TO THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIA LDISTRICT, Respondent and to EVERT L. HAGAN, Real Party in Interest:

GREETINGS:

WHEREAS by the verified petition of HAROLD V. BOISVERT COUNTY OF LOS ANGELES, JOE T. SWEAT and R. L. BROWN, it has been made to appear that you, the Respondent Court, are proceeding in excess of your jurisdiction by continuing to entertain an action entitled Evert L. Hagan v. Harold V. Boisvert, County of Los Angeles, et al., No. 71483, which is barred by law for failure to file a claim with the public entity as required by law, and it appearing that the petitioners herein have no other plain, speedy and adequate remedy at law.

WHEREAS an Alternative Writ of Prohibition and Mandate issued out of this Court commanding you the said Municipal Court, and you the said Evert L. Hagan. to show cause on November 24, 1964, why an order should not be made permanently restraining and enjoining you from taking any further proceedings in the aforesaid Municipal Court case other than to dismiss said action:

WHEREAS this Court has rendered its decision and judgment ordering the issuance of a peremptory writ as aforesaid;

WE, THEREFORE, command you the said Municipal Court to cease and desist any further proceedings in Case No. 71483, Evert L. Hagan v. Harold V. Boisvert, County of Los Angeles, et al., other than to dismiss the said case; and

We further command you, the said Municipal Court to dismiss the aforesaid Case No. 71483, Evert L. Hagan v. Harold V. Boisvert, County of Los Angeles, Joe T. Sweat, R. L. Brown, et al., as to all said defendants with prejudice forthwith upon the receipt of this writ, and that you make known to this Court by ..... how you have complied therewith.

Witness the Honorable A. Curtis Smith, Judge of the Superior Court of the State of California for the County of Los Angeles.

Attest my hand and seal this ..... day of ....., 1964.

WILLIAM G. SHARP, Clerk of the Superior Court of the State of California for the County of Los Angeles

By .....
Deputy

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APPENDIX B-3

MUNICIPAL COURT DISMISSING CASE

Municipal Court Los Angeles, Cal., Dec. 4, 1964

Hagan vs. Boisvert No. 71483

In the above entitled case

case dismissed pursuant to writ

GEORGE J. BARBOUR, Clerk

This notice is informal and for
information of Counsel Only.

By B. J. BRYNE, Deputy

76P475G C1 189 Cdb 2-60 Division 1

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APPENDIX B-4

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

HAROLD V. BOISVERT, COUNTY OF LOS ANGELES, JOE T. SWEAT and R. L. BROWN, Petitioners and Respondents,	)	2nd Civil 29466
vs.	)	
EVERT L. HAGAN, Real Party in Interest and Appellant.	)	

[Filed May 24, 1966 — Dist. Court of Appeal — Second Dist., J. T. Alley, Clerk].

DISTRICT COURT OF APPEAL OPINION AFFIRMING WRIT
May 24, 1966

APPEAL from a judgment of the Superior Court of Los Angeles County. A Curtis Smith, Judge. Judgment affirmed.

Jesse A. Hamilton, for Appellant.

Harold W. Kennedy, County Counsel, Donald K. Byrne, Deputy County Counsel, for Respondents.

On November 22, 1963, Jesse A. Hamilton, an attorney, was found to be in contempt of court and sentenced to serve five days in the county jail as punishment. The record with respect to the matter is set forth in the opinion of this court in the case of *In re Evert L. Hagan,* Criminal No. 9536, filed on the same day as this opinion.

The portion of the order of the court with respect to Jesse A. Hamilton is set forth in the minutes of the court as follows: "The court inquires of attorney Jesse A. Hamilton, attorney for defendant Evert L. Hagan, if he had knowledge that defendant Hagan had a tape recording device secreted upon his person at this hearing. Attorney Hamilton advises the court that he did not have knowledge that his client was recording this proceedings [sic]. Inquiry was made by the court as to whether the attorney Hamilton had knowledge of the source of a previuos transcript used by him in appeal proceedings, obtained by a secret recording device at a hearing held on October 21, 1963 before this court. Attorney Hamilton answered yes. The court finds Jesse A. Hamilton in contempt of court and sentences him to the County Jail for five days. Jesse Hamilton is ordered remanded to the custody of the Sheriff of Los Angeles County without bail."

In a subsequent habeas corpus proceeding, the contempt order was annulled. (*In re Hagan,* 224 Cal. App. 2d 590.) Reference may be made to that decision for a fuller statement of the factual background.

Thereafter appellant commenced the municipal court action with which we are presently concerned. He alleged a conversion of the recording device and sought to recover from respondents the alleged value thereof together with punitive damages. Respondents filed a demurrer to appellant's complaint on the ground that he had failed to allege that any claim had been filed as required by applicable law. This demurrer was sustained with leave to amend. Appellant filed an amended complaint which again failed to allege the filing of any claim but averred that only a demand had been made upon the superior court for the return of the recording device. Respondents again demurred on the same ground. This demurrer was overruled, whereupon respondents filed their answer together with a motion for summary judgment. Declarations of the county auditor and the clerk of the Board of Supervisors of Los Angeles County showed that no claim had been filed by appellant with either of said offices within the time required by law. Appellant's declaration in opposition to the motion contained no averment which even tended to contradict the declarations filed in support of the motion. Nevertheless, the motion for summary judgment was denied by the municipal court.

Respondents thereupon instituted the present proceedings seeking the issuance of an appropriate writ to compel the municipal court to desist from further proceedings other than to dismiss the conversion action. The court below granted petitioners the relief sought by rendering the judgment here under review.

We hold that the judgment is supported by the clear provision of applicable statutory law which establish a condition precedent to the accrual of any cause of action of the character which appellant sought to allege. That condition is the filing of a claim in the manner and within the time prescribed by law. (*Henry v. City of Los Angeles,* 114 Cal. App. 2d 603, 604; *Whaley v. Kirby,* 208 Cal. App. 2d 232, 239.)

The required claim must be filed within 100 days after accrual of the cause of action (Govt. Code, §911.2), and must be filed with the auditor or clerk of the governing body. (Govt. Code, §915, subd. (a).) Failure to file such a claim in the manner prescribed constitutes a bar to a suit for damages against the public entity (Govt. Code, §945.4) as well as against employees of such entity. (Govt. Code, §950.2.)

Appellant appears to argue that a letter written by his attorney under date of November 28, 1963, and addressed to the Honorable McIntyre Faries, then Presiding Judge of the Los Angeles County Superior Court, demanding return of the recording device was

the legal equivalent of the claim required by law.[1] The fallacy of this argument is self-evident.

The judgment is affirmed.

HERNDON, J.

We concur:

ROTH, P.J.
FLEMING, J.

[1]On December 18, 1963, an order was made in the superior court action directing that the recording device be returned to appellant; however, he refused to accept its return and elected to proceed with the conversion action which he commenced on December 23, 1963.

THE COURT: This opinion is not for publication pursuant to the provision of Rule 976, California Rules of Court.

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APPENDIX B-5

DENIAL OF HEARING IN CALIFORNIA STATE SUPREME COURT
July 20, 1966

CLERK'S OFFICE, SUPREME COURT
4250 State Building
San Francisco, California 94102

July 20, 1966

Dear Sir: *I have this day filed Order* .....

HEARING DENIED
In re: 2 Civ. No. 29466
Boisvert v. Hagan

Respectfully

WILLIAM J. SULLIVAN
Clerk

(Post card)

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APPENDIX C

LETTER TO HONORABLE JUDGE FARIES

JESSE A. HAMILTON
Attorney At Law
115 N. Eastern Ave.,
Los Angeles, 22, Cal.
PH: ANgelus 2-5109

November 28, 1963

THE HONORABLE MCINTYRE FARIES,
JUDGE, PRESIDING,
SUPERIOR COURT OF THE STATE OF
CALIFORNIA, FOR THE COUNTY OF
LOS ANGELES,
111 N. Hill Street
Los Angeles, 12, California.

Dear Judge Faries:

On November 22, 1963, Harold V. Boisvert, purportedly sitting as Judge Pro Tem, in Department 2 C, of your Court, without authority and contrary to law, ordered a Deputy Sheriff to seize and detain one Minifon Tape Recorder belonging to my client, Evert L. Hagan.

We do not know whether this valuable machine is presently in the possession of the court or the Sheriff.

Demand is hereby made for the return of this machine to Evert L. Hagan, at 115 North Eastern Avenue, Los Angeles, 22, California, within twenty four (24) hours.

The conduct, considered by us as highly unwarranted, of Mr. Boisvert, in ordering the recorder seized and detained is fully outlined in the transcript of the proceedings before him on November 22, 1963. A copy of the transcript is enclosed herewith.

In so far as the contempt charge is concerned, the District Court of Appeal issued a writ of Habeaus Corpus and set the matter for hearing on December 18, 1963.

Very truly yours,

JESSE A. HAMILTON
/s/ Jesse A. Hamilton

JAH/1

Encl: Transcript.
cc: To: Peter J. Pitchess, Sheriff.
Harold V. Boisvert, Commissioner, Dept. 2 C.

APPENDIX D

LETTER FROM HONORABLE JUDGE FARIES TO MR. HAMILTON

Department of Presiding Judge
THE SUPERIOR COURT
Los Angeles, California

November 29, 1963

Jesse A. Hamilton, Esq.
115 N. Eastern Avenue,
Los Angeles, 22, California.

My dear Mr. Hamilton:

Reference: Your letter of November 28, 1963

Your letter together with a copy of a reporter's transcript for Friday, November 22, 1963 was hand delivered to me in my chambers at 8:45 a.m. on this date (11-29-63). On receipt thereof I telephoned Judge Levit and read him copy of your letter, and suggested (1) that he advise the County Counsel of receipt of this letter, and (2) if there is a Minifon tape recorder belonging to Evert L. Hagan in possession of Commissioner Boisvert or anywhere in any of our rooms the County Counsel should be advised; also, the Sheriff should be advised. Presumably, if there is a proceeding in the District Court of Appeal re habeas corpus

set for December 18, 1963, the Minifon probably will be there as evidence. In checking through the copy of the transcript as sent by you I note Mr. Hagan apparently said to the bailiff in part: "If you want this equipment you can have it." (page 4. line 18 et seq.)

My check of the record does not indicate there are any duties placed upon the Presiding Judge in these matters, nor has he any authority in matters of this sort occurring in departments other than his own. However, as a courtesy to you I am sending you this letter in response to your rather "demanding" letter of November 28.

Your truly,

/s/ McIntyre Faries,

McIntyre Faries
Presiding Judge.

MCF:lll